(1) Supreme Court, U.S.
FILED

No. 02 644 OCT 11 2002

SUPREME COURT OF THE UNITED STATES

July Term, 2002

JOHN HOFFMAN AND MICHAEL HAHALYAK

Petitioners,

v.

JAMES JEFFORDS, individually and as United States Senator,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals For The District of Columbia Circuit

John Hoffman
2718 Espy Avenue
Pittsburgh, PA 15216
(412)341-0613
Pro se

Michael Hahalyak, Esq.
3721 Sardis Road
Murrysville, PA 15668
(724)733-0738
Pro se

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QUESTIONS PRESENTED

1. Whether the district court's refusal to recognize plaintiffs' cause of action pertaining to defendant's illegal and fictitious party caucusing and its impact on petitioners standing to sue, rendered all of its findings and conclusions of law irrelevant, a gross abuse of discretion and a denial of procedural due process?

2. Whether the district court's granting of defendant's motion to dismiss and Senator Jeffords' caucusing by a fictitious party, denied petitioners their constitutionally protected interests under the 14th Amendment to the integrity of their party affiliation from dilution, and standing to sue, as announced by this Court in Sweezy v. New Hampshire, Reynolds v. Sims, N.A.A.C.P. v. Alabama, and N.A.A.C.P. v Button?

3. Whether, had the district court recognized plaintiffs' cause of action, plaintiffs had standing to sue under Article III section 2 of the United States Constitution?

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Constitution of the United States:

Article I, Section 5

"...each House shall be the judge of the elections, returns, and qualifications of its own members."

Article I, Section 6, Cl.1

"...for any Speech or Debate in either House, they shall not be questioned in any other place."

Article III, Section 2, Cl. 1

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Law of the United States, and Treaties made, or which shall be made, under their Authority; --to all Cases affecting Ambassadors, or other public Ministries and...to Controversies to which the United States shall be a Party...."

Amendments to the United States Constitution:

14th Amendment (adopted July 28, 1868)

No state shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States; nor shall any deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

17th Amendment (adopted February 25, 1913)

"The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote...."

STATUTES: -- Vermont Election Law

17 V.S.A. Sec 2403. "Number of candidates; party names:....A person shall not sign more than one statement of nomination for the same office....the word "independent" may

not be used as part of a party name; if no party is indicated, the word 'independent' shall be printed on the ballot, and **no candidate appearing on the ballot as a candidate of a political party shall also appear on the ballot as an 'Independent'."**

17 V.S.A. Sec 2361. Consent of candidate:

".... Unless a consent is filed, the candidate's name shall not be printed on the primary ballot...."

17 V.S.A. Sec 2363, "Separate party ballots [primary] (a) ....The voter shall vote for the candidates of one party only..."

17 V.S.A. Sec 2412. Withdrawal of candidacy: A candidate who has been validly nominated...shall have a right to withdraw his candidacy up until 5:00 p.m. on the forty-seventh day before the day of election...."

TREATISE: 52 Am. Jur. 2d Sections 132, 135.

Opinions Below

The District Court's Order of December 13, 2001 (app. p. 54) is officially reported in 175 F Supp 2d 49 (D.D.C. 2001) (Lamberth J). The order of the circuit court filed May 6, 2002 is set forth on page 67 of the appendix. The United States Supreme Court order denying relief under Rule 11 is set forth on page 68 of the appendix. The Circuit Court orders for rehearing and for rehearing en banc, each dated July 17, 2002 are set forth in the appendix page 69.

JURISDICTION

This appeal is from the orders of the court of appeals entered on July 17, 2002, denying petitioners rehearing en banc and rehearing, of its orders entered May 6, 2002, (app. p.67) affirming the district court's order granting defendant's motion to dismiss and denying petitioners motion for summary judgment which was entered on December 13, 2001

(app. p.54) which was timely appealed to the United States Court of Appeals for the District of Columbia Circuit based on 28 U.S.C. Sec 1257. Petitioners had filed their writ for certiorari with this Court under Rule 11 for early disposition which was denied on June 3, 2002 (app. p. 68).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioners assert the 14th and 17th Amendments to the U. S. Constitution and the Vermont Election Law 17 V.S.A. 2361, 2363, 2403, and 2412. The text of these constitutional and statutory provisions are reprinted at pp v- vi.

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The following are the essential facts to the issues raised in this case.

First, it is petitioners' position that the order of the district court granting defendant's motion to dismiss and denying plaintiffs motion for summary judgment for lack of standing to sue, being based upon an assumed cause of action that was never pleaded and a relief that was never requested, rendered all of the district court's findings and conclusions of law irrelevant, a gross abuse of discretion, and a violation of petitioners' rights to procedural due process as guaranteed under the 14th Amendment of the United States Constitution.

In par. 8 of plaintiffs' amended complaint plaintiffs specifically delineated their cause of action stating: "Plaintiffs aver that they have **filed this action without any intent or desire to interfere with Senator Jeffords' discretionary voting authority**[*] as a U.S. Senator. Plaintiffs aver **that this action is filed simply to assert the invalidity of Senator Jeffords' change of party by mere announcement and to compel the Senator to adhere to his status chosen by him as the Republican nominee on the ballot** -- a routine directory and ministerial act, until defendant fulfills the prescription of the law and the party requirements of becoming an independent and until he receives the needed vote and approval from the electorate of Vermont that he is authorized to serve them in his new

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[*] all emphasis supplied in petition

capacity as an "Independent."

Plaintiffs' cause of action therefore deals exclusively and solely with defendant's fictitious party caucusing which caucusing, not voting on legislation, singularly transferred majority control to the opposition party which in turn denied to petitioners their constitutionally protected rights to their party affiliation and their standing sue.

There is not a single sentence in the court's entire 19 page opinion devoted to defendant's fictitious party caucusing and its impact on petitioners personally and on their constitutionally protected rights as adherents of the Republican party to the integrity of their party affiliation against dilution and standing to sue.

The two exhibits, therefore, that form the crux of this appeal for close examination are plaintiffs' amended complaint, particularly par. 8 that delineates plaintiffs' cause of action, and the courts opinion with its findings, a review of which will conclusively establish that each finding is concerned with defendant's voting on legislation that is neither a part of plaintiffs' amended complaint nor a relevant factor since it was defendant's singular caucusing announcement, not his voting on legislation, that Senator Jeffords singularly transferred majority control under a fictitious and an illegal party label to the opposition party and by which he diluted plaintiffs' party ballot and affiliation. In refusing to consider plaintiffs' caucusing cause of action the district court concluded that plaintiffs' relief of defendant's voting on legislation was not redressable by the court, which plaintiffs never requested.

In their prayer for injunctive relief plaintiffs averred that: "An injunction be issued restraining defendant from claiming or representing his status as an independent United States Senator other than as a Republican and that this fact be made known to the senate and particularly during the senate polling

and caucusing of its members according to party affiliation." The prayers in the remaining counts are of similar import.

In paragraph 10a of plaintiffs amended complaint plaintiffs averred that Senator Jeffords "...changing party affiliation by a simple announcement was illegal...and...violates the 14th and 17th Amendments to the United States Constitution as well as the existing election statutes." Vermont Election Law 17 V.S.A. sec 2403 provides that **"...no candidate appearing on the ballot as a candidate of a political party** shall also appear on the ballot as an Independent".

In par. 6 of plaintiffs' amended complaint plaintiffs averred that

"...Mr. Jeffords at all times had the freedom to vote under the Republican label in the identical manner that he intends to vote as an independent. His abandonment rather referred to his transfer of power to the Democratic Party by polling [pulling] as an independent and not as a Republican...."

Despite the above averments the district court devoted its entire 19 page opinion exclusively to the unrelated subject of defendant's voting on legislation and its lack of redressability as will be shown in the following excerpts from the court's opinion and findings': On page 47 of the appendix the court states "...plaintiffs have failed to show that they personally have suffered or will suffer any injury as a result of Senator Jefford's decision to leave the Republican party ...it does not follow that they will personally be injured if congress fails to enact the **legislation**"; on page 48 the court states: "...the plaintiffs do not, however, demonstrate how they personally will be effected by the lack of **legislation** relating to these issues...there is no indication that they have any personal stake in **potential legislation** concerning the issues...it is doubtful that anyone has a right to certain **legislation** being enacted by congress"; as to actual injury the

court stated (pages 51 - 52) **that plaintiffs lacked standing since "There is absolutely no way of knowing what legislation,** if any, would have been enacted had Senator Jeffords remained a member of the Republican party...the **plaintiffs identified specific issues as abortion and school prayer without citing any legislation** pending at the time Senator Jeffords decided to switch parties;" "...it is **pure conjecture on the plaintiffs part that legislation dealing with these issues or any others would have been enacted** had Senator Jeffords remained a Republican;" (page 55); on the issue of causation the court stated "...the alleged cause of appellees' is not appellants exercise of **legislative** power but the actions of their own colleagues in Congress in **'passing the Act'**", quoting from Raines 521 U.S. at 83; on page 55 the court states "...that the plaintiffs have not shown that Senator Jeffords has not personally prevented **any legislation** let alone the entire Republican agenda, from **being enacted**. **Initially, the court notes that Senator Jeffords is just one out of one hundred senators. As such, his single vote could not by itself defeat or result in the enactment of any legislation**. Stated differently, there are numerous reasons -- completely independent of Senator Jeffords -- why certain **legislation** may not become law or why congress' **legislative agenda** may have changed since the 2000 elections;" on page 59 the court states. **"...it is pure speculation that certain legislation will be enacted** if Senator Jeffords returns to the Republican party...there are numerous factors, independent of Senator Jeffords that can affect whether a particular piece of **legislation is enacted**."

The district court refers to Senator Jeffords' vote on legislation as but one out of 100. What the court omitted in converting petitioners' cause of action to a voting or legislative cause of action was that it was Senator Jefford's singular caucusing announcement, not his voting on

legislation that was the one out of 100 of the caucusing announcements that singularly transferred majority control to the opposition party by breaking the existing tie.

By breaking the tie vote the transfer of majority control took place "the next day" following defendant's fictitious party caucusing. Senator Jeffords describes the massive change in power in his Motion to Dismiss (p. 4):

"On May 24, 2001, Senator Jeffords **announced publicly his decision** (not by voting on legislation) to leave the Republican party; become an independent, and caucus with the Senate Democrats for organizational purposes. On June 5, 2001, after the Senate's return from Memorial Day recess, Senator Jeffords attended the Democrat's weekly policy caucus luncheon for the first time, and, **on the next day, the Democrats assumed majority control of the Senate....the presiding officer recognized Senator Daschle the Democratic Leader to speak first as the leader of the party with dominant representation in the Senate...the Senate then elected a new President Pro Tem and new party secretaries,...and Democrats assumed the chairs of all Senate Committees....and on June 29, 2001,...the Democrats (were given) one member majorities on all committees** (except for the Select Committee on ethics...) and **on July 10, 2001, the two party conferences assumed new committee assignments for their members, which included the designation of Senator Jeffords as the Chair of the Senate Environment and Public Works Committee...."**

No court action will be necessary to effect the transfer of power the next day by Senator Jeffords other than that he accurately and legally caucus his party affiliation as certified by the Vermont canvassing committee on which Republican ballot he was elected which is the sole relief requested. The certificate of election is included in the appendix page 70.

ARGUMENT

I.

The district court's refusal to recognize plaintiffs' cause of action rendered all of the court's findings and conclusions of law irrelevant, a gross abuse of discretion and a denial of procedural due process under the 14th Amendment of the United States Constitution.

The district court's outright refusal to recognize defendant's caucusing action, and its impact on petitioners' constitutionally protected rights and standing to sue, by which caucusing announcement Senator Jeffords singularly transferred majority control to the opposition party, making senator Daschle majority leader of the United States Senate, in return for which Senator Daschle offered Senator Jeffords chairmanship of the Environment and Public Works Committee, as an independent, rendered the findings of the court irrelevant, a gross abuse of discretion and a violation by the court of petitioners procedural due process rights under the 14th Amendment to the United States Constitution. The breach was of such a gross nature in light of the delineation made in paragraph 8 of plaintiffs' cause of action stated in their amended complaint, that the denial by the court of recognition of plaintiffs' cause of action was a denial of plaintiffs' right to be heard to a fair hearing.

Although procedural due process is a flexible term, it always requires the opportunity to be heard in a meaningful manner. A hearing that does not afford a meaningful opportunity to be heard may be as fatal to due process as a denial of any hearing. Greenfield v Villager Industries, Inc. 483 Fed 2d 824 (CCA3). This opportunity to be heard in a meaningful manner includes the right to introduce evidence

and have judicial findings based upon it. Baltimore RR v United States 298 U.S. 349, 80 Led 1209, 56 SCt 797.

In the instant case, the district court effectually denied petitioners their constitutionally protected right to be heard by failing to make any findings whatsoever on plaintiffs' cause of action presented to the district court for disposition which rested entirely on defendant's illegal caucusing and its impact on petitioners' constitutionally protected interests under the 14th Amendment to the United States Constitution.

II.

The district court in its findings and Senator Jeffords by his illegal party caucusing denied petitioners, as adherents of the Republican party, their constitutionally protected rights under the 14th Amendment to the integrity of their party affiliation and party ballot from dilution, and their standing to sue, as announced by, and in conflict with, this Court's decisions in N.A.A.C.P. v Alabama 357 U.S. 449, Reynolds v Sims 377 U.S. 533, and Sweezy v New Hampshire 354 U.S. 254.

A. One's political party affiliation is constitutionally protected and any state action that has the effect of curtailing the freedom to associate is subject to the closest scrutiny by this Court.

This Court has responded affirmatively in protecting the ballot from dilution for in the ballot lies the exclusive power, reposed in the people, in the governance of this nation, requiring full protection by this Court. This is a tremendously important right that springs from this nation's democratic or representative beginnings and remains so today.

In Reynolds v Sims 377 U.S. 533 in an opinion by Mr. Chief Justice Warren, this Court said, page 527:

"Undoubtedly, the right of suffrage is a fundament matter in a free democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, **any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.** Almost a century ago, in Yick Wo v Hopkins, 118 US 356, 30 L ed 220, the Court referred to 'the political franchise of voting' as 'a fundamental political right, because preservative of all rights .' 118 US, at 370, 30 L ed at 226."

Page 526:

"**No right is more precious in a free country than that of having a voice in the election of those who make the laws** under which, as good citizens, we must live. **Other rights**, even the most basic, **are illusory if the right to vote is undermined**. Our constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

This Court has repeatedly held that one's party affiliation is a constitutionally protected right. In N.A.A.C.P. .v Alabama 357 U.S. 449, 497 this Court stated:

"It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech, [citations omitted] ... **and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny**."

In **Kusper v Pontikes** 38 Led 260, p.266 "The right to associate with a political party of one's choice is an integral part of this basic constitutional freedom."

Justice Douglass in a dissenting opinion found it necessary to join with the majority when it came to the eroding of the

party ballot and the sanctity of party affiliation. In his dissent he referred to the integrity of the ballot as "the sanctity of the ballot" and to its "erosion" as its "pollution", stating that **any attempt** to defile the ballot by pollution **whether indirect or not**, is immaterial:

"...any attempt to defile the sanctity of the ballot cannot be viewed with equanimity. The fact that a particular form of pollution has only an indirect effect on the final election is immaterial. The fact that it occurs in a primary election or nominating convention is likewise irrelevant."

And we may add, the fact that the dilution occurs by substituting a fictitious party in party caucusing is irrelevant.

B. **Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.**

A fundamental principle of democratic society is the political freedom of the individual. In Sweezy v New Hampshire 1 Led 2d 1311, p 1325 this Court held that any interference with the freedom of a party is **simultaneously an interference with the freedom of its adherents**, stating (p. 1325):

> "Equally manifest as a fundamental principle of democratic society is political freedom of the individual...Our form of government is built on the premise that **every citizen** shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. **Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an**

interference with the freedom of its adherents."

The above quote is adopted in full in N.A.A.C.P. v Button 371 U.S. 415, p. 417 reaffirming that "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." In Democratic Party of U.S. v. Wisconsin 450 US 107, 67 Led 2d 82, 1015 SCt 1010 (1981) this Court held that "the freedom to associate for the common advancement of political beliefs necessarily presupposes the freedom to identify the people who comprise the association, and to limit the association to those only and that **any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."**

In Reynolds v Sims, 12 Led 2d 506, p. 508 the Court held in a case challenging the validity of existing apportionment provisions that an individual's right to vote for a state legislator is unconstitutionally impaired when **its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state.**

When Senator Jeffords substituted the independent party in caucusing shortly after being elected on the Republican ballot, he diluted the power of the Republican party in the senate the "next day" when majority control was yielded to the Democratic party. The very act of Senator Jeffords in caucusing drained the power of petitioners in their party affiliation in violation of their constitutional rights under the 14th Amendment to the United States Constitution. Majority control is the sine que non to successful legislating for which majority control petitioners personally expended time, effort and expense and will be required because of defendant's illegal caucusing, to expend additional time effort and expense to help regain majority control necessary to enact certain legislation of extreme personal importance to petitioners pertaining to "abortion rights, etc."

III

Had the district court recognized plaintiffs cause of action, petitioners would have had standing to sue under Article III section 2 .

A. **Petitioners had standing to sue arising out of defendants' infringement of their constitutionally protected rights.**

Petitioners had standing to sue because as adherents of the party their constitutionally protected interests in the sanctity of their party ballot and affiliation from dilution was infringed upon by defendant in that by defendant's fictitious party caucusing Senator Jeffords singularly transferred majority control to the opposition party and in doing so he diluted the power and integrity of petitioners' party affiliation and ballot. The day following defendant's caucusing the power of petitioners' party affiliation was drained by Senator Jeffords' illegal and fictitious party caucusing. Since the district court did not recognize plaintiff's caucusing cause of action it did not recognize it's constitutional impact on petitioners' rights as adherents of the Republican Party.

In their Motion For Summary Judgment and Plaintiffs Response To The Defendant's Motion to Dismiss plaintiffs set forth this violation with numerous citations to which not one word of the court's opinion is devoted. Plaintiffs specifically averred in their Motion for Summary Judgment the fundamental issue raised by plaintiffs for disposition before the court which it did not mention in it's findings or opinion:

"The fundamental issues raised in this case and in this Memorandum are: (1) whether the 17th Amendment which mandates that every U.S. Senator shall be elected "by the

people thereof, for a term of six years; includes as a constitutionally protected right the political party as an integral inherent part of the 17th Amendment that is constitutionally protected?...(2) Whether a candidate for the U.S. Senate can, after being elected and during the term of his elected period, alter his political party affiliation, **without abridging the rights of the electors**? " By the term "the electors" (not his electors) is meant petitioners and all Republican voters nationally since defendant's transfer of majority control was a national event that impacted all electors equally whether residents of Vermont or Pennsylvania. The Vermont election is of no significance in this case insofar as defendants caucusing since caucusing in this case pertains to the transfer of national power affecting all states equally and is not a local issue.

The cases in support of petitioners position are cited under Argument II which establish that petitioners possessed a constitutionally protected interest as adherents of the Republican party to the integrity of their party against dilution which defendant infringed upon by caucusing under a fictitious and illegal party and by transferring majority control to the opposition party.

B. **Plaintiffs fully met the three pronged test required under Article III of the United States Constitution.**

On page 42 of its opinion the district court writes: "...In order to establish standing to sue under Article III of the Constitution, plaintiffs must demonstrate that: (1) they have suffered an injury that is both (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the conduct of which they complain; and (3) the injury is likely to be redressed by a court decision in their favor,"

Had the district court considered plaintiffs' pleadings in deciding defendant's motion to dismiss the three pronged test

would have been met in that plaintiffs suffered a personal injury under the 14th Amendment to the United States Constitution in the dilution of the integrity of their party affiliation arising out of the transfer of majority control directly caused solely by defendant's fictitious party caucusing which imposed upon petitioners the additional burdens of expending further time, effort, and expense to regain majority control, in order that they may have a reasonable chance of having legislation enacted of extreme personal importance to them such as "abortion, prayer, etc.". Passing legislation depends on majority control. Senator Jeffords removed this essential prerequisite to successful legislating. This injury is directly traceable to defendant's illegal caucusing and this injury is redressable the next day as proven in the transfer of authority the next day after defendant had announced his caucusing as an independent.

C. **Petitioners suffered a personal injury that imposed burdens upon them as a result of Senator Jeffords' infringement of their constitutionally protected interests as described above.**

In addition, to the personal injuries described herein above legislation and judicial appointments that had a probable chance of success prior to defendant's illegal caucusing were seriously impaired with the loss of majority control.

Petitioner Michael Hahalyak filed the original action as attorney for John Hoffman but because local District of Columbia rules of court imposed conditions which would have appreciably delayed the filing of suit plaintiffs agreed that the suit should be file pro se. Petitioner Michael Hahalyak has been duly licensed in all courts in Pennsylvania and in all the federal courts in Pennsylvania as well as in the

CONCLUSION

This court has enunciated in Sweezy v. New Hampshire, supra, that any interference with the freedom of a party is simultaneously an interference with its adherents and that any state action that may have the effect of curtailing the freedom to associate is subject to the closest scrutiny by this court. In Reynolds v. Sims 377 U.S. p. 527 Mr. Chief Justice Warren stated "No right is more precious in a free society than that of having a voice in the election of those who make the laws... Other rights, even the most basic, are illusory if the right to vote is undermined" and "To the extent that a citizens right to vote is debased, he is that much less a citizen." The court noted that a denial of a constitutionally protected right demands judicial protection; "the oath of a Justice of the Supreme Court of the United States requires no less of that court."

How therefore can the decision of the district court be justified that permits a singular fictitious and illegal party caucusing announcement to transfer control of the mightiest senate in the world to the opposition party and in so permitting to subvert and dilute the integrity of the legally recognized party that on its ballot placed Senator Jeffords in office. It is not a matter to be treated with equanimity. True, Senator Jeffords was free to vote as he willed but to caucus under a fictitious party in order to manipulate the power of the Senate into the hands of Senator Thomas Daschle in return for a chairmanship of a prized committee as an Independent, a fictitious party and illegal party under Vermont law, now made Senator Jeffords accountable to no one but to a fictional party, destroys the essence of representative government. Manipulation by politicians

becomes the name of the game and the door is opened wide by the decision of the district court, affirmed by the circuit court, whereby three or more senators could merge to accomplish the same end result for their self aggrandizement. A fictional party cannot be acceptable in a representative government. It is but an instrument for manipulative power that seeks to overrun the peoples' will which will relies entirely upon the integrity of the ballot as protected by the courts. Otherwise there is no difference between ballot box stuffing and fictitious party manipulative caucusing except that in the former the culprit will be prosecuted but in the latter the dignitary will not only retain his seat for the remaining five and one half years, but will also be applauded for his courageous act.

It is an incredible fact that in a representative government the power of the most powerful senate in the world was shifted by a waft of fiction—without voting, without having expenditures, and without the arduous process of time, money and effort necessary in achieving majority control.

Fortunately, in cases where it has been shown that the suffrage rights of the people of this nation are being destroyed or seriously diluted this Court has always stepped in to protect the interests of the people against this erosion in order that the sanctity of the ballot, upon which all other rights in a representative government are dependent, can survive.

We ask that certiorari be granted in this case because of the failure of the district court to hear plaintiffs' cause of action and the potential dangers that lurk in the entry of a fictional party in the governing of this nation and we ask that the following fundamental issue raised in the court below, but left unanswered, now be decided by this court:

"The fundamental issues raised in this case ...are: (1) whether the 17th Amendment which mandates that every United States Senator shall 'be elected by the people thereof, for a

term of six years,' includes as a constitutionally protected right the political party as an integral inherent part of the 17th Amendment that is constitutionally protected ... and (2) Whether a candidate for the United States Senate can, after being elected and during the term of his elected office, alter his political party affiliation [in caucusing] without abridging the rights of the electors."

Respectfully submitted,

John Hoffman
2718 Espy Avenue
Pittsburgh, Pennsylvania
15216
(412)341-0613

Michael Hahalyak, Esq
3721 Sardis Road
Murrysville, Pennsylvania
15668
(724)733-0738

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOHN HOFFMAN AND MICHAEL HAHALYAK. Plaintiffs

v.

JAMES JEFFORDS, Defendant.

Civil Action Number 01-1190 (RCL)

This matter comes before the Court on the defendant's motion to dismiss the plaintiffs' amended complaint and the plaintiffs' motion for summary judgment. Specifically, the defendant argues that the amended complaint should be dismissed pursuant to Rule 12(b)(1) because the Court lacks jurisdiction to adjudicate the plaintiffs' claims, pursuant to Rule 12(b)(5) because of insufficiency of process, and pursuant to Rule 12(b)(6) because the plaintiffs have failed to state a claim upon which relief can be granted. The plaintiffs, in contrast, argue that they are entitled to judgment as a matter of law. After

athorough review of the amended complaint, the parties' memoranda, and the applicable law, the Court finds that the defendant's motion should be GRANTED and the plaintiffs' motion should be DENIED.

I. BACKGROUND

The plaintiffs in this case, two Republicans from Pennsylvania, seek judicial review of Senator James M. Jeffords' decision to leave the Republican party. In the amended complaint, The plaintiffs claim that Senator Jeffords violated Vermont election laws and the Fourteenth and Seventeenth Amendments to the United States Constitution by changing his political party affiliation after being elected as a Republican. The plaintiffs want this Court to order Senator Jeffords to reinstate his affiliation with the Republican party and to enjoin him from caucusing with the Democratic members of the Senate. The voters of Vermont first elected James M. Jeffords to the United States Senate in 1988. After being re-elected in 1994, Senator Jeffords again sought and won the Republican nomination in

Vermont's September 12, 2000 primary election. Senator Jeffords retained his seat in the Senate by winning the November 7, 2000 general election, where he ran as the Republican nominee. On January 3, 2001, the President of the Senate presented the Senate with a certificate of election signed by the Governor of Vermont certifying Senator Jeffords' election to a new six-year term. At the opening of the 107"" Congress, Senator Jeffords returned as a member of the Republican Conference, which encompassed all Republican members of the Senate. In fact, Senator Jeffords had at all times during his tenure in the Senate caucused with the other Republican members.

On May 24, 2001, however, Senator Jeffords announced his decision to leave the Republican party, become an Independent, and caucus with the Senate Democrats for organizational purposes. Senator Jeffords' decision to caucus with the Senate Democrats was particularly important-and controversial-because the 2000 elections resulted in a Senate composed of 50 Republicans and 50

Democrats. The 2000 elections thus yielded, for only the third time in American history, an equal balance of power between the two principal political parties.' Even though there was an equal number of Democrats and Republicans in the Senate, the Republicans had gained working control of the Senate because of the Vice President's power, as President of the Senate, to cast tie-breaking votes. Accordingly, Republicans took working control of the Senate after Chief Justice Rehnquist swore in Richard B. Cheney, who is a Republican, as Vice President on January 20, 200 1. Moreover, pursuant to an organizational agreement entered into by both parties, an equal number of Republican and Democratic members served on all committees, with Republican senators assuming the committee chairs. After separate deliberations by the Republican and Democratic caucuses, committee members from each party were appointed on January 25 and January 30, 2001. By changing political parties, Senator Jeffords enabled the Democratic party to assume working control of the senate.

On June 5. 2001. after returning from the Memorial Day recess. Senator Jeffords attended the Democrats' weekly policy caucus luncheon for the first time. and. on the next day, the Democrats took control of the Senate. On June 6. 2001. the presiding officer recognized Senator Tom Daschle. a Democrat. as the leader of the party with dominant representation in the Senate. As the majority party, the Democrats elected a new President pro tempore and assumed the chairs of all Senate committees. Additionally. pursuant to a new organizing resolution. the Democrats gained a one-member majority on all committees except for the Select Committee on Ethics. which always has equal party representation. 'The Senate was also equally divided in 1881 and 1953.

The plaintiffs. who describe themselves as registered Republicans. **filed** the instant suit shortly after Senator Jeffords announced his decision to switch political parties. In the amended complaint. the plaintiffs state that jurisdiction is founded on diversity of citizenship and

because of federal questions arising under the Fourteenth and Seventeenth Amendments to the United States Constitution. The plaintiffs allege that they "have been adversely impacted in that the Republican program to be ushered in by the Republican party nationally has been seriously obstructed by the defendant's unauthorized act in altering party affiliation." They further claim that Senator Jeffords' decision to change parties "destroys the confidence of the electorate,"'destroys the foundation of good government by lowering the standard of integrity of its representatives," 66 promotes party raiding which would seriously weaken the stability of the elective process," "undermines the very purpose of anti-raiding statutes," "eliminates the heart of a well balanced political party," and was without the approval of the individuals that voted for him in the Vermont elections. The plaintiffs have moved for summary judgment on each of these claims.

In response to the amended complaint, Senator Jeffords filed a motion to dismiss on September 10, 2001. In the

motion. he argues that there are several independent bases upon which this Court should dismiss the plaintiffs' amended complaint. Senator Jeffords **first** contends that the action should be dismissed because the Court does not have jurisdiction to -adjudicate the plaintiffs' claims. In particular, Senator Jeffords asserts that the plaintiffs lack standing to bring this lawsuit and that the Speech or Debate Clause of the Constitution bars their claims against him. Next, Senator Jeffords argues that the amended complaint should be dismissed because the plaintiffs failed to serve properly the U.S. Attorney for the District of Columbia, as required by Rule 4(i) of the Federal Rules of Civil Procedure. Finally, Senator Jeffords contends that the action should be dismissed because it is nonjusticiable under the political question doctrine.

11. ANALYSIS

The Supreme Court has made it clear that before a federal court can consider the merits of a claim. the person seeking

to invoke the jurisdiction of the court must establish that they have standing to initiate the lawsuit. Whitmore v. Arkansas, 495 U.S. 149, 155 (1990.). The burden of showing that this standing requirement is met rests squarely on the party bringing the action. FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990) (finding that "petitioners in this case must allege facts essential to show jurisdiction."). In order to show that standing exists,"the party who seeks the exercise of jurisdiction in his favor" must clearly "allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." Id. If the plaintiff fails to make the necessary allegations, then the Court must find that the party does not have standing to bring the lawsuit. Id. (citing McNutt v. General Motors Acceptance Co Ep., 298 U.S. 78, 189 (1936)). See also U.S. v. HUs, 515 U.S. 737, 743 (1995). Moreover, once a court finds that a plaintiff does not have standing to initiate an action, it must dismiss the complaint. Warth v. Seldin, 422 U.S. 490, 502 (1975) (noting that if "the plaintiff's standing does not adequately

appear from all materials of record. the complaint must be dismissed."). Courts should not consider the merits of the plaintiff's claim in determining whether he has standing to bring the lawsuit. Id. at 500 (recognizing that "standing in no way depends on the merits of the plaintiffs contention that particular conduct is illegal"); Whitmore v. Arkansas, 495 U.S. 149, 15 5 (1990) (stating that "we thus put aside for now Whitmore's Eighth Amendment challenge and consider whether he has established the existence of a 'case or controversy. '"). In fact, "for purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth, 422 U.S. at 501; AFL-CIO v. Pierce 697 F.2d 303, 305 (D.C. Cir. 1982) (noting that "for purposes of the standing issue, we accept as valid Congressman Sabo's pleaded legal theory."). Based on this legal standard. the Court will first address the threshold jurisdictional issue of standing. In making that

determination, the Court will assume that the facts alleged in the complaint are true. Only after finding that the plaintiffs have standing will the Court evaluate the other issues raised in the defendant's motion to dismiss and the plaintiffs' motion for summary judgment. Warth, 422 U.S. at 498 (recognizing that standing "is the threshold question in every federal case, determining the power of the court to entertain the suit."). If, however, the Court concludes that the plaintiffs do not have standing, it will dismiss the complaint without any further discussion of the other issues raised in the two motions. FW/PBS Inc., 493 U.S. at 230 ("We do not reach the merits of the adult entertainment and adult cabaret petitioners' challenges to the civil disability provision, § 41 A-5(a)(I 0), and the provision disabling individuals residing with those whose licenses have been denied or revoked, § 41A-5(a)(5), because petitioners have failed to show they have standing to challenge them,"); Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 475-76

(1982) (stating that 64of one thing we may be sure: Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States.").

A. **Standing**

Article 111, § 2, of the United States Constitution explicitly provides that federal courts may only adjudicate actual "Cases" or "Controversies." Arizonans For Official English v. Arizona , 520 U.S. 43, 64 (1997) (noting that "the Constitution **confines** federal courts to the decision of 'Cases' or 'Controversies. '"); Allen v. Wright, 468 U.S. 737, 750 (1984) (same). Accordingly, "[under the rubric of Article III jurisprudence, the federal courts have developed a cluster of doctrines such as standing, mootness, ripeness, political question, and the like by which to give meaning to Article III's case-or-controversy requirement." Page v. Shelby, 995 F. Supp. 23, 26 (D.D.C. 1998). See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (finding that "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of

Article III. "All of these doctrines place limitations on the jurisdiction of federal courts. Allen, 468 U.S. at 750. Specifically, "[i]n its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth, 422 U.S. at 498. That is, "[i]n essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Id. In order to establish standing to sue under Article III of the Constitution, plaintiffs must demonstrate that: (1) they have suffered an injury that is both (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the conduct of which they complain; and (3) the injury is likely to be redressed by a court decision in their favor.' Skaggs v. Carle, 110 F.3d 831, 834 (D.C. Cir. 1997) (citing Lujan, 504 U.S. at 560-6 1). The plaintiffs have the burden of establishing each of these elements. Id. Moreover, "[since they are not mere pleading requirements

but rather an indispensable part of the plaintiff s case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." Lujan, 504 U.S. at 555. This means that for purposes of a motion to dismiss, general factual allegations of injury resulting from the defendant's conduct may be sufficient since the court assumes that general allegations in the complaint embrace specific facts that are necessary to support the claim. Id at 561.

1. Personally Suffered A Particularized Injury That Is Not Conjectural

a) Particularized Injury It is by now well established that "at an irreducible minimum, Art. III requires the party who invokes the court's authority to show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant[.]" Valley Forge Christian College, 454 U.S. at 472; Animal Legal Defense

Fund v. Glickman, 154 F.3d 426, 433 (D.C. Cir. 1998) (noting that "the key requirement ... is that the plaintiff have suffered his injury in a personal and individual way .]"). As a result, the Supreme Court has "consistently stressed ' To the extent some of the plaintiffs' claims are based on Vermont election law, the Court must look to that state's law to determine whether the plaintiffs have standing to bring those claims. Seguros Commercial America v. American President Lines, Ltd., 105 F.3d 198 (5" Cir. 1996) (noting that "a federal court exercising diversity jurisdiction must look to state law to determine standing to sue[.]"). There is, however, no distinction between federal law and Vermont law regarding standing. Agency of Natural Resources v. United States Fire Ins. Co., 2001 WL 147201 (Vermont 200 1) (noting that the Supreme Court of Vermont has adopted the test articulated by the Supreme Court of the United States concerning standing); Parker v. Milton, 726 A.2d 477, 480 (Vermont 1998) (same). Thus, the analysis on the issue is the same for all of the plaintiffs' claims that a

plaintiff s complaint must establish that he has a personal stake in the alleged dispute, and that the alleged injury is particularized as to him." Raines v. Byrd, 521 U.S. 81 1. 819 (1997). In fact, the Supreme Court has explicitly stated that "[by particularized, we mean that the injury must affect the plaintiff in a personal and individual way."

Lujan, 504 U.S. at 561. Thus, for example, in the equal protection context, "even if a governmental actor is discriminating on the basis of race, the resulting injury accords a basis for standing only to those persons who are personally denied equal treatment by the challenged discriminatory conduct." U.S. v. Hays, 515 U.S. 737, 743-44 (1995); Moose Lodge No. 7 v. Irvis, 407 U.S. 163, 167 (1972) (finding that "in this case appellee was not injured by Moose Lodge's membership policy since he never sought to become a member."). Moreover, this Court recently ruled that a plaintiff who was challenging the Senate's cloture rule did not have standing to bring the suit because he failed to demonstrate that he has sustained or will immediately

sustain direct harm as a result of the rule. Page, 995 F. Supp. at 27-28. In that case, the court specifically noted that the plaintiff "does not indicate how he personally has been or will be injured if legislation he favors "fails to become law." Id. at 28.

Injuries that are suffered by the public at large are not particularized injuries within the **confines** of Article 111. The Supreme Court has "consistently held that a plaintiff raising only a generally available grievance about government–claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large–does not state an Article III case or controversy." Lujan, 504 U.S. at 573-74; Valley Forge, 454 U.S. at 482-83 (noting that the Supreme Court "repeatedly has rejected claims of standing predicated on the right possessed by every citizen to require that the Government be administered according to law[.]"); Massachusetts v. Mellon, 262 U.S. 447 (1923) (same). For instance, in Crist

v. Commission on Presidential Debates, the Second Circuit noted that several circuits have "concluded that a voter fails to present an injury in fact when the alleged harm is abstract and widely shared[.]" 262 F.3d 193, 195 (2d Cir. 2001). Moreover the First Circuit has specifically held that"the harm done to the general public by corruption of the political process is not a sufficiently concrete, personalized injury to establish standing." Becker v. FEC, 230 F.3d 381, 389-90 (lst Cir. 2000).

The Court **finds** that in the instant case the 'plaintiffs have failed to show that they personally have suffered or will suffer any injury as a result of Senator Jeffords' decision to leave the Republican party. First, with respect to the plaintiffs' claim regarding the Republican national program, the Court **finds** that while the plaintiffs may have sincere beliefs concerning such legislation, it does not follow that they will personally be injured if Congress fails to enact the legislation. For instance, in their opposition to the motion to dismiss, the plaintiffs cite abortion rights and school prayer

as two such issues that they think were adversely impacted by Senator Jeffords' decision to switch parties. The plaintiffs do not, however, demonstrate how they personally will be affected by the lack of legislation relating to these issues. That is, the plaintiffs may feel strongly about abortion rights and school prayer, but based on the amended complaint there is no indication that they have any personal stake in potential legislation concerning the issues.' ' It is also doubtful that such an interest would be a legally cognizable injury for purposes of Article 111. In other words, it is doubtful that anyone has a right to certain legislation being enacted by Congress.

Second, with respect to the plaintiffs' claims concerning the violation of Vermont election laws, the plaintiffs have again failed to show how they personally are injured by this alleged violation of the law. Plaintiffs did not, nor could they, vote in either the primary or general election in which Senator Jeffords ran for office. Consequently, they had absolutely no personal stake whatsoever in the political

party he was affiliated with at the time of the elections. The plaintiffs may have wanted Senator Jeffords to be re-elected because he was a Republican, but that does not mean that they have personally suffered an injury as the result of him changing parties after the election.

Third, with respect to the claims dealing with the "right to freedom of association," the plaintiffs have utterly failed to allege how their rights have been violated by Senator Jeffords' decision to change parties. In fact, the plaintiffs have made no effort to explain how their individual right to associate with others was affected by Senator Jeffords' decision to leave the Republican party. Indeed, the Court sees no basis upon which the plaintiffs could claim that their First or Fourteenth Amendment rights have been violated. As such, the Court **finds** that they have not suffered any personal injury in this regard.

Finally, with respect to the plaintiffs' assertion that Senator Jeffords' decision has diminished the **confidence** of the electorate, destroyed the foundation of good

government, promoted party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that the plaintiffs have not demonstrated how they are personally affected by such events in a way different than the public at large.

To satisfy the **first** requirement for standing, it is not enough for the plaintiffs merely to allege that Senator Jeffords has destroyed the foundation of good government and promoted party raiding. Even if those allegations are true, the plaintiffs still must show that they personally were affected by such events in a manner different from the public at large. Lujan 504 U.S. at 573-74; Becker, 230 F.3d at 389-90. They have clearly failed to do so in this case.

b) Actual Injury

In order to have standing, a plaintiff must allege an injury that is "distinct and palpable, and not abstract or conjectural or hypothetical." Allen, 468 U.S. at 75 1. That is, "to constitute injury in fact, the harm alleged must be actual and imminent, not conjectural and speculative." Page, 995

F. Supp. at 28. Thus, for example, in Paige v. Shelby, this Court ruled that a complaint containing unspecified allegations regarding legislation desired by the plaintiff is "precisely the kind of vague, conjectural and hypothetical harm which cannot confer standing." Id. Moreover, as the First Circuit recognized in Becker, voters' "concern for the corruption of the political process is not only widely shared, but is also of an abstract and indefinite nature, comparable to the common concern for obedience of the law." **Becker,** 230 F.3d at 390. As such, the First Circuit ruled that the voters challenging the action by the FCC did not have standing to bring the claim. Id.

The Court **finds** that the plaintiffs in the instant case have failed to show an actual or imminent injury as a result of Senator Jeffords' decision to change political parties. First, with respect to their claim that Senator Jeffords has stymied the Republican national program, the Court finds that this injury is too speculative and conjectural for it to constitute an actual injury under Article 111. There is

absolutely no way of knowing what legislation, if any, would have been enacted had Senator Jeffords remained a member of the Republican party. This speculation becomes especially apparent considering the plaintiffs identified specific issues-such as abortion and school prayer-without citing any legislation pending at the time Senator Jeffords decided to switch parties.

Thus, it is pure conjecture on the plaintiffs' part that legislation dealing with these issues or any others would have been enacted had Senator Jeffords remained a Republican.

Second, with respect to the claims that Senator Jeffords violated Vermont election law, the Court **finds** that the mere allegation that Senator Jeffords violated Vermont election law when he changed parties is not enough to constitute an actual injury under Article 111. Allen, 468 U.S. at 751. Rather, the plaintiffs must show that they have incurred some distinct and palpable injury as a consequence of Senator Jeffords' allegedly illegal decision to switch parties.

The plaintiffs have not done so in this case.

Third, with respect to the allegations regarding the right to association, the Court finds that since the plaintiffs have failed to allege how their rights have been violated, it is impossible for the Court to discern any actual or imminent injury to the plaintiffs. While the violation of the plaintiffs' right to freedom of association would qualify as an actual injury, before the Court can make that finding the plaintiffs must articulate in the complaint how their constitutional right was violated. The plaintiffs, as stated above, have not done so in the instant case. As such, the Court finds that the plaintiffs have not shown an actual or imminent injury relating to this claim.

Finally, with respect to the claim that Senator Jeffords' action has diminished the confidence of the electorate, destroyed the foundation of good government, promoted Party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that these injuries are, as the First Circuit ruled in Becker too abstract and indefinite to

constitute an actual injury for purposes of Article 111. There is absolutely no way for the plaintiffs–or the court for that matter-to qualify or quantify these alleged injuries. Rather. they appear to be pure puffery on the part of the plaintiffs.

2. Injury That Is Fairly Traceable to the Defendant's Conduct

In order to have standing to initiate a lawsuit, the plaintiff must be able to show that his alleged injury is fairly traceable to the defendant's unlawful conduct. Lujan, 504 U.S. at 560-6 1.

To satisfy this causation requirement, there must be a sufficiently clear causal connection between the illegal action taken by the defendant and the injury suffered by the plaintiff. California Assoc. of Physically Handicapped v. FCC, 778 F.2d 823, 825-26 (D.C. Cir. 1985) (finding that the plaintiff "has not met the requirement set out second-the causality requirement" because the "injury alleged by CAPH is not fairly traceable to the FCC action[.]").

The Supreme Court has specifically held that the plaintiff does not have standing if the injury "results from the

independent action of some third party not before the court." Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26,41-42 (1976). In the context of Congressional action, the Supreme Court has specifically noted that "it is far from clear that this injury is 'fairly traceable' to appellants, as our precedents require, since the alleged cause of appellees' injury is not appellants' exercise of legislative power but the actions of their own colleagues in Congress in passing the Act." Raines, 521 U.S. at 830.

The Court finds that in the instant case the plaintiffs have failed to demonstrate that their alleged injuries were caused by Senator Jeffords' decision to leave the Republican party. First, with respect to the plaintiffs' claim regarding the Republican national program, the Court finds that the plaintiffs have not shown that Senator Jeffords has personally prevented any legislation, let alone the entire Republican agenda, from being enacted. Initially, the Court notes that Senator Jeffords is just one out of one-hundred senators. As such, his single vote could not by itself defeat

or result in the enactment of any legislation. Stated differently, there are numerous reasons–completely independent of Senator Jeffords-why certain legislation may not become law or why Congress' legislative agenda may have changed since the 2000 elections.' Further, the actions of third parties, such as the other ninety-nine members of the senate, cannot be attributed to Senator Jeffords. Simon, 426 U.S. at 41-42. Consequently, there is no way for the plaintiffs to show that the alleged setback to the Republican national program is fairly traceable to Senator Jeffords' decision to leave the party.

Second, with respect to the claim that Senator Jeffords violated Vermont election law by changing parties after the election, the Court finds that to the extent the plaintiffs have failed to identify a **specific** injury caused by this allegedly illegal action, there is no way for the Court to ascertain whether such an injury is fairly traceable to the actions of Senator Jeffords. As such, the plaintiffs have not sustained their burden of showing that the alleged wrongdoing by

Senator Jeffords caused an injury to them.

The Court reaches the same conclusion with respect to the plaintiffs' claim that Senator Jeffords' decision to change parties violated their right to freedom of association. Since the Court cannot discern any basis upon which the plaintiffs' rights have been violated, it cannot and does not find that Senator Jeffords' actions are the cause of any injury to the plaintiffs in this regard.

One Such event that has clearly changed the legislative agenda is the terrorist attacks of September I 1, 2001. -15-

Finally, with respect to the claims that Senator Jeffords has diminished the confidence of the electorate, destroyed the foundation of good government, promoted party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that even assuming arguendo that these things are true, they are not fairly traceable to the actions of Senator Jeffords. It is disingenuous for the plaintiffs to assert that by changing parties Senator Jeffords single handedly caused all of these things to happen. There are

any number of incidents throughout the last thirty years-including Watergate, Iran Contra, and the Impeachment of President Clinton-that could have caused these things to occur. Moreover, in the complaint, the plaintiffs even recognize that Senator Jeffords was not the first, nor is he likely the last, Senator to switch political parties.

Thus, there is no way for the plaintiffs to show that any of the harms, assuming they actually occurred, are attributable to the actions of Senator Jeffords.

3) Injury Likely To Be Redressed By Court Order

In order to satisfy the redressability prong of the standing doctrine, the plaintiff must show that it is likely, as opposed to merely speculative, that their injury will be redressed by a favorable decision by the Court. LWM, 504 U.S. at 560. For example, in Page, the case where the plaintiff challenged the Senate's cloture rule, this Court found that the plaintiff had failed to meet this requirement. Page, 995 F. Supp. at 29. In particular, the Court noted that even if it declared the cloture rule unconstitutional, the Senate could still return to

its former practice of allowing unlimited debate unless there existed unanimous consent to close discussion on a specific matter. Id. Consequently, the Court concluded that the plaintiff did not have standing to bring the lawsuit because such a result would clearly not redress his alleged injuries. 1-d.

The plaintiffs in the instant case have failed to show that a favorable decision by this Court will adequately redress any of their alleged injuries. First, with respect to the plaintiffs' claim regarding the Republican national program, the Court finds that it is pure speculation that certain legislation will be enacted if Senator Jeffords returns to the Republican party. As noted above, there are numerous factors, independent of Senator Jeffords, that can affect whether a particular piece of legislation is enacted. Thus, even if the Republican party regained working control of the Senate, the Court finds that it is unlikely that the plaintiffs' alleged injuries would be redressed. That is, the plaintiffs have failed to show a sufficient causal connection between

their alleged injuries and the judicial relief requested in this regard.

Second, with respect to the claim the Senator Jeffords violated Vermont election law, the Court finds that to the extent the plaintiffs have not demonstrated any injury to them by this alleged violation of the law, there is no basis upon which this Court could conclude that it can redress those injuries. Accordingly, the Court **finds** that the plaintiffs have not sustained their burden with respect to this claim.

The Court reaches the same conclusion concerning the plaintiffs' allegations that Senator Jeffords violated their constitutional right to freedom of association. The plaintiffs have not shown how this alleged violation took place as a result of Senator Jeffords changing political parties. Consequently, the Court **finds** that the plaintiffs have failed to demonstrate that it can redress any such injury **stemming** from this alleged constitutional violation.

Finally, with respect to the plaintiffs' claims that Senator Jeffords has diminished the **confidence** of the electorate,

destroyed the foundation of good government, promoted party raiding, and undermined the purpose of the anti-raiding statutes, the Court finds that even if these allegations are true, the plaintiffs have not shown how an order from this Court will redress or even alleviate those harms. For instance, even assuming that Senator Jeffords did diminish the confidence of the electorate by changing parties, there is no indication that a Court order requiring him to switch back to the Republican party will restore or raise the confidence of the electorate. The plaintiffs have completely failed to show how this Court possesses the power to redress these alleged injuries. As such, they have not sustained their burden in this regard.'

B. Other Issues Raised in Senator Jeffords' Motion to Dismiss

The Court will not address the other issues raised in Senator Jeffords' Motion to Dismiss because it has found that the plaintiffs do not have standing to bring the instant action.

C. The Plaintiffs' Motion For Summary Judgment

Similarly, the Court will not address the issues raised in the plaintiffs' Motion for Summary Judgment because they do not have standing to initiate this suit in the first instance. Thus, the plaintiffs are clearly not entitled to judgment as a matter of law. 'In their opposition to Senator Jeffords' motion to dismiss, the plaintiffs claim that they have standing to bring the instant action under the unique circumstances doctrine. Specifically, they assert that "under the 'unique circumstances' doctrine where fundamental rights would otherwise be denied, and possession of the constitutional right would have no adequate remedy and it would be difficult for a person to effectively bring suit, standing to bring suit exists." The Court finds, however, that there are two reasons why this argument must be rejected. First, the unique circumstances doctrine does not appear to be applicable to the instant case. The D.C. Circuit has recognized that "under the unique circumstances doctrine, appellate courts will excuse an untimely notice of appeal

where the appellant "could have filed a timely notice but was mislead to delay filing by a court order or ruling which purportedly extended or tolled the appeal deadline." PMD Produce Brokerage Corp. v. Dep't of Agriculture, 234 F.3d 48, 53 (D.C. Cir. 2000). That clearly is not the procedural posture of this case. Second, even assuming that the plaintiffs' statement of law is correct, the Court finds that the plaintiffs' have failed to make even a preliminary showing that their constitutional rights have been violated.

III. CONCLUSION

For the foregoing reasons, the Court finds that the plaintiffs do not have standing to bring the instant action against Senator Jeffords. In fact, the Court finds that the plaintiffs have failed to satisfy any of the requirements the Supreme Court has articulated as being necessary to have standing under Article III. As a result, the Court must dismiss the plaintiffs' amended complaint. A separate order shall issue this date.

Date: (12-13-01)

Royce C. Lamberth (s)
Royce C. Lamberth
United States District Judge

ORDER

Upon consideration of the Motion of Defendant Senator James M. Jeffords to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1),(5), & (6), Plaintiffs' Motion for Summary Judgment, and the memorandum of points and authorities and statements of material facts filed in support thereof and in opposition thereto, good cause having been shown, it is hereby

ORDERED that the Motion of Defendant Senator James M. Jeffords to Dismiss is granted, and it is

FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment is denied, and it is

FURTHER ORDERED that the amended complaint against Defendant Senator James Jeffords is dismissed with prejudice.

Dated this 13th day of December, 2001

Royce C. Lambert (s)
United States District Judge

IN THE DISTRICT COURT OF
THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

John Hoffman and Michael Hahalyak,
individually and jointly,
plaintiffs,

v.

James Jeffords, individually
and as United States Senator,
defendant.

CIVIL ACTION
CASE NO: 1:01CV01190
R.C.L.
Pro se General Civil

AMENDED COMPLAINT

COUNT I: MANDAMUS

Plaintiffs file their Amended Complaint and in support thereof aver the following:

1. Plaintiff, John Hoffman, is a resident of Allegheny County, Pennsylvania. He is and has been a registered Republican. Plaintiff Michael Hahalyak is a resident of Westmoreland County Pennsylvania. He is and has been a registered Republican. Plaintiff Hahalyak filed the original complaint as counsel for John Hoffman. He has been

Westmoreland County Pennsylvania. He is and has been a registered Republican. Plaintiff Hahalyak filed the original complaint as counsel for John Hoffman. He has been admitted to practice in all of the state and federal courts in the Commonwealth of Pennsylvania and in the United States Supreme Court. Because of the delay incident to his admission to the District of Columbia bar and the urgency of the issue to his admission to the District of Columbia bar and the urgency of the issue presented in this case plaintiffs have agreed to jointly file the Amended Complaint pro se. Each are also acting pro bono. Each of the plaintiffs however have an interest in the subject matter of this suit in that by reason of the unauthorized act of defendant in transferring the power of the majority party in the Senate to the Democrats plaintiffs have been adversely impacted in that the Republican programs to be ushered in by the Republican party nationally has been seriously obstructed by the defendants unauthorized act in altering party affiliation.

2. Defendant, James Jeffords, is a resident of the state of Vermont, who has been a registered Republican for the

past 35 or more years and is presently serving as the United States Senator from Vermont. The Defendant was recently reelected as the Republican nominee for U.S. Senator in which he [requested] the Secretary of State of Vermont to have his party affiliation represented as "Republican". A copy of this request is attached hereto and is made a part hereof.

3. Jurisdiction in this case is founded on: (1) diversity of citizenship and amount. The amount in controversy, which is difficult to specify, exceeds the jurisdictional requirement; (2) the existence of a Federal question arising under the 14th and the 17th Amendment to the Constitution of the United State, and (3) the existence of a question arising under the statutes of the United States and of the state of Vermont as well as the party requirements pertaining to political elections in the state of Vermont.

4. It is averred that in defendant's numerous campaigns for nomination, election and reelection, defendant repeatedly called upon the Republican Party and the registered Republican voters during the past 35 years for their support and vote. During this period he represented to the Vermont

electorate that he was running as the certified nominee of the Republican party and under the Republican banner defendant won a dozen elections since 1966. In his recent campaign for reelection as U.S. Senator defendant let the people of Vermont know that he backed the Republican presidential candidate George W. Bush, a conservative -- both in the primary and the general election.

5. Based upon his promises and representations of his Republican candidacy the Republican party and the Republican voters of Vermont gave him the necessary votes that brought him his many Republican victories.

6. However, on or about May 23, 2001, some five months after his installation as United States Senator, Senator Jeffords notified the press and the Senate members, after discussions and consultations with the opposition party Democratic Minority leader Thomas Daschle and Minority whip, Harry Reid, that because of his conscience he could no longer serve as a Republican but that he recently would hereafter serve as an Independent. this despite the fact that he recently specifically authorized and requested that his name be listed on the ballot as a "Republican". Defendant.

however, did not during his last election campaign, notify his party nor the Independent Party that he would run as an Independent nor did he obtain a certificate of nomination as an Independent nor did he register as an Independent nor did he comply with the statutes or party requirements relating to the nomination and election as an Independent. It is averred that James Jeffords knowingly ignored the legal requirements that were to be met before he could legally consider himself as an independent. Nor did James Jeffords follow the established precedent adhered to by former members of the United States House and Senate, particularly Senator Wayne Morse of Oregon, who in July 1953, when the majority leader Robert Taft died unexpectedly, leaving the Democrats with a 48 – 47 edge in the Senate, decided to become an Independent, continued as a GOP Senator because he publicly announced that it would be dishonorable for him to hand over control to the Democrats, having been elected as a Republican. Morse remained an Independent until the 1954 election year when by his change of party he delivered control of the Senate to the Democrats.

It is averred that defendant, on the other hand, abandoned the Republican party at a most crucial hour knowing that he, James Jeffords, would by his single stroke of abandoning the Republican party, place, if successful, the controlling power of the Senate into the hands of the Democratic party, rendering the Republican national program promised by George W. Bush and at that time endorsed by Senator James Jeffords, a devastating setback to the Republican party and its membership nationally. Jeffords complained that the Republican party would not accommodate his liberal views. It is averred that this reason lacks merit since Mr. Jeffords at all times had the freedom to vote under the Republican label in the identical manner that he intends to vote as an Independent. His abandonment rather referred to his transfer of the power to the Democratic Party by polling [pulling] as an Independent and not as a Republican. It is averred that Senator Jeffords by his transfer of party control of the Senate to the Democrats, did by his act intentionally breach his representations, promises, assurances and commitments made to his electorate, to the Republican

party and to his Republican aids. Based on information and belief plaintiffs aver: that Minority leader Thomas Daschle and Minority whip Harry Reid offered defendant in return for his abandonment of his party affiliation the prized chairmanship of the Environment and Public Works Committee.

7. Plaintiffs aver that because Senator Jeffords did not comply with the requirements prescribed under the law and under the party rules and regulations (be it the Independent party of Senator McCarthy or otherwise) in order to be nominated and elected as an Independent and because he never received a Certificate of Nomination as an Independent, Senator Jeffords' announcement that he was an Independent was, we aver, invalid, void and a nullity under the law, and the attempted transfer of power to the Democratic party was rendered equally invalid void and a nullity.

8. Plaintiffs aver that they have filed this action without any intent or desire to interfere with Senator Jeffords' discretionary voting authority as a U.S. Senator. Plaintiffs aver that this action is filed simply to assert the invalidity of

Senator Jeffords' change of party by mere announcement and to compel the Senator to adhere to his status chosen by him as the Republican nominee on the ballot – a routine directory and ministerial act, until defendant fulfills the prescription of the law and of the party requirements of becoming an Independent, and until he receives the needed vote and approval from the electorate of Vermont that he is authorized to serve them in his new capacity as an Independent. It is averred that Senator Jeffords must have been fully aware of the fact that Richard Mallory, his immediate predecessor in the House, left the Republican party in 1970 to run as legislator but was defeated as an Independent by the Vermont electorate.

9. Plaintiffs aver that they have no adequate remedy under the law and that irreparable harm will result in the improper transfer of power unless immediate relief is granted.

10. Plaintiffs aver that the described action of Senator James Jeffords in changing party affiliation by a simple announcement was illegal for the reasons stated and for the following reasons:

a. The act of Senator Jeffords changing his party

affiliation by mere announcement without an election, violates the 14th and 17th Amendments to the the United States Constitution, as well as the existing election statutes. It also destroys the confidence of the electorate in a political system that would permit a Senator to be elected under the banner of a party that he freely chose and shortly after his election by his simple announcement permits him to transfer the control of the Senate to the opposition party and to abandon the voters and the party that worked for him and placed him in power.

b. It destroys the foundation of good government by lowering the standard of integrity of its representatives.

c. Plaintiffs aver that under the existing law political parties form an essential element in the foundation of a republican form of government and without political parties, each with its own platform, our government could not survive as a democratic representative society. The power assumed by

Senator Jeffords in changing his party affiliation by mere pronouncement is contrary to the 17th Amendment in which the politicians (state legislators) were placed as the electors of the U.S. Senator by the vote of the people. Plaintiffs aver that when Senator Jeffords had single-handedly denied his party affiliation he likewise equally denied the required vote each person who placed him in office as a Republican, for without his nomination in the primary as a Republican he could not be elected as a United States Senator. It is further averred that Senator Jeffords conferred with the opposition leaders before announcing his change of party affiliation and it was by their effort known as raiding and their offer of a committee chairmanship that finalized Mr. Jeffords unauthorized action. Plaintiffs aver that if the approach applied by Senator Jeffords is validated and openly practices by the other Senators the United States government would witness an instability never before experienced. A senators

success would be measured in the time devoted in manipulating and raiding opposing parties participants as had been done surreptitiously by Senator Daschle former minority leader, and Senator Reid, former minority whip, –now crowned majority leader Daschle and majority whip Reid. With each raiding party a new party would be placed into power and what is called a "historic event" would unfortunately bode ill for a representative democratic government.

Wherefore plaintiffs pray that judgment be entered against defendant individually and as a senator, and that he be required to reinstate his status as a Republican senator as represented on his ballot and in his Certificate of Nomination which status must remain intact until such time as he meets the requirements under the law as a legally qualified representative of the Independent party or as an Independent. It is further requested that defendant be ordered to notify the Senate of his continuing status as a Republican Senator.

COUNT II

QUO WARRANTO

1–12 Plaintiffs incorporate herein the averments in Count I and makes the same a part hereof.

Wherefore plaintiffs respectfully request that defendant be declared unqualified as a United State Senator, Independent, and that he notify forthwith the Senate of his existing status as a Republican as shown in his Certificate of Nomination until such time as he meets the legal requirements for nomination and election as an Independent.

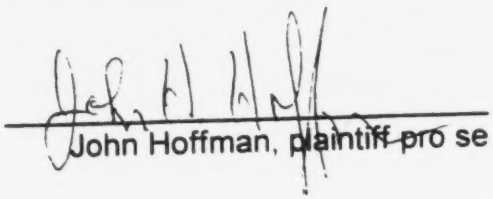
COUNT III

EQUITABLE RELIEF – INJUNCTION

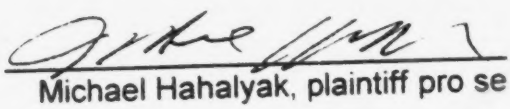
1-12 Plaintiffs incorporate herein the averments in Count I and makes the same a part hereof.

Wherefore plaintiffs pray that judgment be entered defendant and that an injunction be issued restraining defendant from claiming or representing his status as an Independent United State Senator other than as a Republican and that this fact be made known to the Senate

and particularly during the Senate polling and caucusing of its members according to party affiliation.



John Hoffman, plaintiff pro se



Michael Hahalyak, plaintiff pro se

Order of The United States Court of Appeals before Ginsburg, Chief Judge, Rogers and Garland, Circuit Judges, filed May 6, 2002

ORDER

Upon consideration of the motion to hold in abeyance and the opposition thereto; and the motion for summary affirmance and the opposition thereto, it is

ORDERED that the motion to hold in abeyance be denied. Appellants have not demonstrated that the requested relief is warranted. It is

FURTHER ORDERED that the motion for summary affirmance is granted. The district court correctly determined that applicants lacked standing to challenge Senator Jefford's change in party affiliation, as appellants failed to demonstrate an injury that is personal, actual, traceable to Jefford's conduct, or likely to be redressed by a favorable decision. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F. 2d 541 (D.C. Cir.) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timelpetition for rehearing or petiotion for rehearing en ban. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

SUPREME COURT OF THE UNITED STATES

June 3, 2002

Re: John Hoffman and Michael Hahalyak
v. James Jeffords
No. 01-1447

Dear Mr. Hoffman:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter, Clerk

Orders United States Court of Appeals filed July 17, 2002

Before: Ginsberg, Chief Judge, and Rogers and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed May 20, 2002, it is **ORDERED** that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Linda Jones

Deputy Clerk

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, and Garland, Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition de denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk; BY: Linda Jones, Deputy Clerk

CERTIFICATE OF ELECTION
FOR THE OFFICE OF U.S. SENATOR
(General Election – November 7, 2000)

State of Vermont)
) ss.
Washington County)

At Montpelier, on the 14th day of November 2000, a Canvassing Committee appointed by law completed a canvass of the returns cast at the General Election held on the 7th day of November 2000, for the office of U.S. Senator. The Committee hereby certifies that JAMES M. JEFFORDS, Republican, of Shrewbury was duly elected to the office by the voters present and voting.

*Signatures omitted because not decipherable on original, however, document certified as accurate.

No. 02–644

NOV 26 2002

In the Supreme Court of the United States

OCTOBER TERM, 2002

JOHN HOFFMAN AND MICHAEL HAHALYAK, PETITIONERS

v.

JAMES JEFFORDS, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

PATRICIA MACK BRYAN,
(Counsel of Record),
Senate Legal Counsel,
MORGAN J. FRANKEL,
Deputy Senate Legal Counsel,
GRANT R. VINIK,
THOMAS E. CABALLERO,
Assistant Senate Legal Counsel,
642 Hart Senate Office Building
Washington, D.C. 20510–7250.
(202) 224–4435
Counsel for Senator James M. Jeffords

NOVEMBER 2002.

QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that petitioners lacked Article III standing to bring this suit, which sought an order compelling United States Senator James M. Jeffords to affiliate with the Republican caucus in the Senate in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda.

2. Whether the Speech or Debate Clause, art. I, § 6, cl. 1, of the Constitution, the political question doctrine, and the failure of the amended complaint to state a claim upon which relief can be granted also provide ample bases for affirmance.

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In the Supreme Court of the United States

OCTOBER TERM, 2002

No. 02–644

JOHN HOFFMAN AND MICHAEL HAHALYAK, PETITIONERS

v.

JAMES JEFFORDS, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT UNITED STATES SENATOR JAMES M. JEFFORDS IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondent United States Senator James M. Jeffords submits this brief in opposition to the petition for a writ of certiorari filed by petitioners John Hoffman and Michael Hahalyak.

STATEMENT OF THE CASE

This petition arises out of an amended complaint filed by John Hoffman and Michael Hahalyak in the United States District Court for the District of Columbia. Describing themselves as Pennsylvania Republican voters, petitioners alleged that United States Senator James M. Jeffords violated the 14th and 17th Amendments to the United States Constitution, as well as unnamed Vermont state statutes, by leaving the Republican Party during his term of office. Amd. Compl. ¶10, Appendix to Petition (hereinafter "Pet. App.") at 59–60.

Petitioners alleged that they had been "adversely impacted" by Senator Jeffords' becoming an Independent "in that the Republican program to be ushered in by the Republican party nationally has been seriously obstructed by the defendant's unauthorized act in altering party affiliation." *Id.* ¶1, Pet. App. at 53. They claimed that Senator Jeffords' decision to change parties "destroys the confidence of the electorate," "destroys the foundation of good government by lowering the standard of integrity of its representatives," "promotes party raiding which would seriously weaken the stability of the elective process," "undermines the very purpose of anti-raiding statutes," "eliminates the heart of a well balanced political party," and lacked the approval of those who voted for him in the Vermont elections. *Id.* ¶10, Pet. App. at 60. Petitioners asked the district court to order Senator Jeffords to affiliate with the Republican Party, and make that affiliation public in caucusing in the Senate, in order to shift control of the Senate from the Democratic to the Republican Party and restore the Republican legislative agenda. *Id.*, Pet. App. at 62.

In a 19-page memorandum opinion, the district court granted Senator Jeffords' motion to dismiss the amended complaint. Pet App. at 17–51 (175 F. Supp. 2d 49 (D.D.C. 2001) (Lamberth, J.)). The district court held that the petitioners did not satisfy any of the three irreducible minimum requirements to establish Article III standing. *Id.* at 23–47 (175 F. Supp. 2d at 54–60). Other grounds, not addressed by the district court because of petitioners' lack of standing, *id.* at 47 (175 F. Supp. 2d at 60), also required dismissal of the amended complaint: (i) the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution immunized Senator Jeffords from suit; (ii) the political question doctrine barred the suit; and (iii) the amended complaint failed to state a claim upon which relief could be granted.

Petitioners appealed the judgment to the United States Court of Appeals for the District of Columbia Circuit, No. 02–5006, and then petitioned this Court for a writ of certiorari before judgment, No. 01–1447 (docketed Apr. 3, 2002). The D.C. Circuit denied petitioners' motion to hold their appeal in abeyance and summarily affirmed the judgment dismissing the amended complaint, because "[t]he district court correctly determined that appellants lacked standing to challenge Senator Jeffords's change in party affiliation, as appellants failed to demonstrate an injury that is personal, actual, traceable to Jeffords's conduct, or likely to be redressed by a favorable decision." Pet. App. at 65 (2002 WL 1364311 (D.C. Cir. May 6, 2002) (No. 02–5006) (per curiam) (Ginsburg, C.J., Rogers, Garland, JJ.)).

This Court denied the petition for certiorari (which, although filed before judgment, was now post-judgment) on June 3, 2002. Pet. App. at 65–66 (122 S. Ct. 2328 (No. 01–1447)). The D.C. Circuit denied the petition for rehearing and petition for rehearing en banc on July 17, 2002. Pet. App. at 66.

By the time the 108th Congress convenes in January, party control of the Senate will have returned to the Republicans, not because of Senator Jeffords' actions or intervention by the courts, but because of the composition of the Senators "elected by the people [of each State]," U.S. CONST. amend. XVII, § 1, in the 2002 election.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari should be denied because it fails to raise any "compelling" federal question, Sup. Ct. Rule 10, warranting this Court's attention.[1] The

[1] There may also be a question whether this petition is a consecutive petition, or out-of-time petition for rehearing, that may not be filed under Sup. Ct. Rule 44.4. Although petitioners' prior petition was filed before judgment in the court of appeals, it was denied on June 3, 2002, after the D.C. Circuit's entry of judgment on May 6, 2002. The instant petition was filed on October 11, 2002, within 90 days of the July 17, 2002 denial of their rehearing petition in the court of appeals, *see* Sup.

Continued

decision below is in harmony with decisions of this Court and of other circuits and reflects a proper understanding and application of established principles delimiting the jurisdiction of federal courts under Article III of the Constitution.

I. Article III confines the jurisdiction of the federal courts to the resolution of actual "Cases" and "Controversies." U.S. CONST. art. III, §2. To meet this threshold jurisdictional requirement, petitioners must demonstrate that they suffered (i) an "'injury in fact'—an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (ii) a causal connection between the injury alleged and the conduct complained of; and (iii) a likelihood that the injury is redressable through a favorable disposition of the matter. *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The court of appeals correctly held that petitioners failed to satisfy any of these three irreducible constitutional minimum requirements.

First, petitioners did not establish "injury in fact." The gravamen of their claim of purported "obstruction" of the "Republican program" alleges a generalized diminution of political power that cannot establish "injury in fact" as to them. Amd. Compl. ¶¶1, 6, Pet. App. at 53, 55–58; *Raines v. Byrd*, 521 U.S. 811, 821, 826 (1997) ("claim of standing . . . based on a loss of political power" or "diminution of . . . official power" too abstract to state cognizable claim under Article III). Nor did they suffer any "injury in fact" from Senator Jeffords' alleged violation of Vermont election laws. As Pennsylvania residents, petitioners had "absolutely no personal stake whatsoever" in Vermont elections. Pet. App. at 34 (175 F. Supp. 2d at 56). Further, petitioners did not allege, and "utterly failed" to explain, how they suffered any personal injury resulting from the claimed abridgement of their 1st Amendment

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Ct. Rule 13, but not within 25 days of this Court's denial of their initial petition, *see* Sup. Ct. Rule 44.2.

right to freedom of association. *Id.* at 35 (175 F. Supp. 2d at 56).

Petitioners' remaining allegations concerning the diminished "confidence of the electorate," the "stability of the elective process," destruction of the "foundation of good government," and similar claims are quintessential "generalized grievances" that cannot confer standing. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475 (1982). "Abstract injury is not enough," *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974), and the court of appeals correctly determined that the petitioners alleged nothing more.

The courts below also correctly held that none of the petitioners' alleged injuries was "fairly traceable" to Senator Jeffords, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992), as opposed to "some third party not before the court." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976). Whether the objectives of the "Republican program" are achieved is "fairly traceable" to the collective actions of both Houses of Congress and the President, not a single Senator. Pet. App. at 41–42 (175 F. Supp. 2d at 58). Indeed, following the November 2002 election, not even party control of the Senate is traceable to Senator Jeffords' challenged action, as the Republicans will achieve majority status in the Senate in the 108th Congress irrespective of Senator Jeffords' caucusing decision.

Further, because petitioners failed to identify any specific injuries caused by alleged violations of the 1st Amendment or Vermont election law, such injuries are not fairly traceable to Senator Jeffords. *Id.* at 42–43 (175 F. Supp. 2d at 58). Nor are harms associated with petitioners' generalized grievances. Finally, to the extent there exists any diminution in the "confidence of the electorate" or the "stability of the elective process," such injuries cannot be "fairly trace[d]" to Senator Jeffords' decision to leave the Republican Party. *Id.* at 43–44 (175 F. Supp. 2d at 58–59).

Third, the courts below correctly held that petitioners' alleged injuries would not be redressed by a favorable decision. *Id.* at 44–47 (175 F. Supp. 2d at 58–59). Even assuming Senator Jeffords' return to the Republican caucus, which, as noted, would no longer be dispositive of party control in the Senate, it cannot be assumed to be "likely" that unspecified Republican political objectives would be achieved as a result. As the November 2002 election demonstrates, "there are numerous factors, independent of Senator Jeffords, that can affect whether a particular piece of legislation is enacted." *Id.* at 45 (175 F. Supp. 2d at 58–59). Similarly, petitioners' purported 1st Amendment and Vermont election law violations cannot be redressed because they were neither alleged in the amended complaint nor explained in the petitioners' submissions. *Id.* at 46 (175 F. Supp. 2d at 58–59). The same is true with respect to petitioners' generalized grievances. Reinstating the Republican majority in the Senate would not itself restore "confidence in the electorate," rebuild the "foundation of good government," or remedy any of petitioners' other nonjusticiable allegations of generalized harms. *Id.* at 46–47 (175 F. Supp. 2d at 59–60).

II. Dismissal was also mandated by the Speech or Debate Clause, art. I, §6, cl. 1, of the Constitution, which provides that "[f]or any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." The Clause affords absolute immunity from judicial inquiry into "the deliberative and communicative processes by which Members participate in . . . matters which the Constitution places within the jurisdiction of either House." *Gravel v. United States*, 408 U.S. 606, 625 (1972). Petitioners seek to question Senator Jeffords about his "speech" with his Senate colleagues stating his political affiliation and his decision to "debate" legislative matters in the Democratic, rather than the Republican, caucus. Such speech and associative activities in party conferences are at the core of the "deliberative and communicative processes by which Members participate in" the Senate's legislative proceedings. *Id.* Senator

Jeffords' attendance and participation in a party caucus in the Senate, therefore, "shall not be questioned in any other Place."

The political question doctrine also supported dismissal. *First*, there has been "a textually demonstrable constitutional commitment of th[is] issue to a coordinate political department," *Baker v. Carr*, 369 U.S. 186, 217 (1962), because adjudication of this suit would improperly intrude into the constitutionally committed responsibilities of the Senate to choose its officers, art. I, §3, cl. 5, determine its rules of proceedings, art. I, §5, cl. 2, and judge elections, returns, and qualifications of its Members, art. I, §5, cl. 1. *Second*, there is a "lack of judicially discoverable and manageable standards for resolving" this case, *Baker*, 369 U.S. at 217, because there is no principle from which a court could derive guidance in order to take command of the Senate's internal organization to dictate which party should control the Senate under its rules. *Third*, this action cannot be adjudicated in accord with the "respect due coordinate branches of government," *id.*, because the relief petitioners request would require the Court to intrude into the Senate's internal organization and management.

This suit is also subject to dismissal on the merits. The 1st, 14th, and 17th Amendments to the Constitution do not prohibit a United States Senator from changing his party affiliation during his term of office. Nor do the Vermont election laws cited by petitioners. Such laws do not purport to regulate any conduct after election and could not be interpreted so as to impose a restriction of party membership or loyalty on a senator's service. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 782 (1995) ("States lack the power to add qualifications" for service in Congress to those fixed in Constitution).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

PATRICIA MACK BRYAN,
(Counsel of Record),
Senate Legal Counsel,
MORGAN J. FRANKEL,
Deputy Senate Legal Counsel,
GRANT R. VINIK,
THOMAS E. CABALLERO,
Assistant Senate Legal Counsel.

NOVEMBER 2002.

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